



U.S. Immigration
and Customs
Enforcement

February 9, 2012

MICHAEL MORISY
MUCKROCK NEWS
DEPT MR 948
PO BOX 55819
BOSTON, MA 02205-5819

RE: OPLA12-363, 2012FOIA3637

Dear Mr. Morisy:

This is in response to your letter dated January 7, 2012, appealing the adverse determination in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request. The initial request asked for copies of files, reports, evidence, or guidance created or compiled in preparation of the seizure of the web domain dajaz1.com, which was seized as part of Operation In Our Sites.

U.S. Immigration and Customs Enforcement (ICE) initially denied your request in part by denying your request for a fee waiver and placing you in the "all other" fee category. You have appealed the decision to deny your request for a fee waiver and the fee category you have been placed in. ICE has further reviewed your request in question that gave rise to this partial denial of your request. Our analysis follows.

You have indicated that you should have received "news media" status, and have been assessed fees accordingly. In relevant part, the provisions regarding fee assessment, and any prospective request for a fee waiver, ICE FOIA properly applies the standard for a fee waiver as determining "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."¹ More specifically, the Department of Justice issued revised fee waiver policy guidance on April 2, 1987.² These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. Those six factors are as follows: (1) whether the subject of the requested records concerns "the operations or activities of the government"; (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor of a narrow segment of interested persons; (4) whether the contribution to public understanding of government operations or activities will be "significant"; (5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison

¹ See, Piper v. U.S. Dep't of Justice, 294 F. Supp. 2d 16, 24 (D.D.C. 2003).

² See, 5 U.S.C. § 552(e); see also FOIA Update, Vol. XIX, No. 3, at 6; FOIA Update, Vol. XIV, No. 3, at 8.